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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,183	07/08/2003	Erin Jessica Lindsay	033528-001	7109
7590 BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404			EXAMINER LANG, AMY T	
			ART UNIT 3731	PAPER NUMBER
			MAIL DATE 05/01/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/614,183

**Applicant(s)**

LINDSAY, ERIN JESSICA

**Examiner**

AMY T. LANG

**Art Unit**

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-5, and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 01/11/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,660,016 has been reviewed and is accepted.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 7-10** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claims 7-10 are in improper form by depending from a cancelled claim and therefore are rendered incomplete. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1, 5, and 12** are rejected under 35 U.S.C. 102(b) as being anticipated by Ginn et al. (US 6,022,313).

With regard to claims 1 and 12, Ginn et al. discloses an endoscopic apparatus for harvesting a desired blood vessel (see entire document). The apparatus comprises an endoscopic barrel (20) having at least two lumens (column 3, lines 13-19). As shown in Figure 1, it is the examiner's position that the proximal handle comprises either the cylindrical portion of the endoscopic barrel (20) or tubes (25, 26) and the cone portion comprises the distal tip, the portion that is distal of the cylindrical portion. Therefore, the cone portion is integral with the distal end of the endoscopic barrel.

One lumen (35) of the endoscopic barrel is dimensioned for receiving endoscope (16). Another lumen (38) overlaps the instantly claimed fork recess by containing a manipulator fork arm there through. The manipulator fork arm is distally attached to a manipulator fork (18) such that when the manipulator fork is in an open position (as shown in Figure 2), the manipulator fork would prevent the manipulator fork arm from retracting further into the endoscopic barrel. Since the diameter of fork recess 38 is smaller than the diameter of the opened manipulator fork, the manipulator fork is not allowed to pass through the exterior surface of the cone portion. Therefore, the manipulator fork is fully retracted since it cannot move proximally. The manipulator fork would be maintained on the exterior surface of the cone portion when in this fully retracted position.

With regard to **claim 5**, manipulator fork (18) comprises actuator (30), as shown in Figure 1. Since the actuator is directly attached to the distal end of the manipulator,

moving the actuator rotationally or translationally will also cause the same movement of the distal manipulator fork.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 3, 4, 11, 13, and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginn et al. (US 6,022,313).

Ginn et al. discloses an endoscopic apparatus for harvesting a blood vessel comprising an endoscopic barrel (20) having at least three lumens (35, 38, 40) (column 3, lines 17-19; Figure 2). A manipulator fork (18) extends through lumen 38. However, Ginn et al. does not specifically disclose another manipulator fork extending through lumen 40.

Ginn et al. does teach that the manipulator fork is first inserted through lumen 38 to access the desired vessel. The manipulator fork is then withdrawn from lumen 38 and then inserted into lumen 40 to access the other side of the vessel (column 4, lines 20-26). Therefore, it is the examiner's position that it would have been obvious at the time of the invention for the endoscopic apparatus to comprise two manipulator forks to access both sides of the vessel simultaneously. Additionally, it has been held that a mere duplication of the essential working parts of a device (the manipulator fork) involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, USPQ 8. (CCPA 1977). Since the manipulator fork of Ginn et al. is disclosed as a cutting device (column 3, lines 39-40), an additional manipulator fork would also overlap the instantly claimed additional cutting device.

### ***Response to Arguments***

9. Applicant's arguments filed 6/26/2007 have been fully considered but they are not persuasive.

Specifically, applicant argues that Ginn et al. does not disclose a cone portion. However, a cone is defined as "a shape whose base is a circle and whose sides taper up to a point" or a shape resembling a cone. As shown in Figures 1 and 2, Ginn et al. clearly discloses member 20 as comprising a shape whose base is circular and whose sides taper to a point. Therefore, it is the examiner's position that Ginn et al. discloses a cone portion.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Lang whose telephone number is (571) 272-9057. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

04/24/2008

/Amy T Lang/

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731